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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Written communication submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[5 August 1993]

GE.93-14483 (E)

IMPUNITY IN PERU

1. The International Federation of Human Rights (FIDH) and its Peruvian affiliate the Association for Human rights (APRODEH) have followed with keen interest the work done by the Sub-Commission over the past two years on the impunity of perpetrators of human rights violations. Impunity, or failure on the part of the State to investigate and punish those guilty of serious violations of human rights, is profoundly weakening democracy and the rule of law in Peru. We could maintain that impunity is the rule and that only in exceptional cases have penalties been imposed. A brief review of this situation follows.

2. In 1992, according to the report of the United Nations Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25 and Add.1) Peru was the country with the largest number of missing detainees in the world. Despite this, not a single case was investigated and not a single judicial sentence was imposed. Something similar happened between 1983 and 1991, when Peru was in second or third place in the world for number of missing detainees. The 2,798 cases of missing detainees recorded in the above-mentioned United Nations report never attracted a judicial penalty. The situation is one of total impunity.

3. Of the specific cases of torture communicated to the Special Rapporteur by various national human rights institutions, 10 cases in 1989 and 18 in 1992 all remained unpunished. Indeed some cases, although reported publicly to the national press with reliable proof, were neither investigated nor judicially punished. This happened with 10 peasants from San Ignacio who were tortured (July 1992) and then accused of terrorism, and who had to spend eight months in prison before they were all declared innocent. Coquis Cox, then a major in the National Police who was responsible for the torture, is now the Chief, having been promoted in 1993. Almost total impunity has helped to turn torture into an institutionalized and systematic practice. Amnesty International and Americas Watch 1/ have also pointed this out.

4. As regards summary executions, the most serious recent case, known as the "Barrios Altos" case, occurred in the city of Lima (November 1991). 2/ Sixteen people including a child were murdered during a celebration at which there were probably some subversives present. The scene of the crime was a few metres away from a branch of the National Intelligence Service and 100 metres from the seat of the Congress of the Republic. The congressional inquiry pointed to the National Intelligence Service but could not be completed owing to the coup d'état (April 1992). After the coup the Government did not investigate the case; neither did the present Constituent Congress, in which the Government party has a majority. The judiciary and the government procurator's office did not take any action either. Impunity in this case encouraged the same people to commit another horrible crime a few months later at the E.G.V.-La Cantuta University, as described in the next paragraph.

5. Impunity well deserves another coup d'état, this appears to be the position of General Hermoza Ríos, the current Commander-in-Chief of the Army, and of the National Intelligence Service headed by former Captain Vladimiro Montesinos. Both opposed the investigation, set in motion by the opposition

in the Constituent Congress, into the disappearance of 10 people (a professor and 9 other members of the University) at the E.G.V.-La Cantuta University in the Department of Lima. Army tanks paraded in the capital (April 1993) to dissuade the Congress. The majority of Congress members, supporters of the Government, finally decided not to summon the two officers mentioned above, in whom the President of the Republic, in his turn, placed his full confidence. Meanwhile General Robles, the third most important man in the Peruvian army, first took refuge in the United States Embassy at Lima and then was granted political asylum in Argentina (April 1993); he publicly accused, in writing, the National Intelligence Service and the Commander-in-Chief of the Army of being responsible for the events at La Cantuta. These incidents reflect the complex process, which has been going on for years now, of institutionalizing impunity in the country.

Legal framework for impunity

6. After the coup d'état (April 1992) the executive power dictatorially issued a set of legal provisions and adopted measures which have formed a legal framework for ensuring impunity in Peru. In this connection the following should be taken into consideration: (i) the distribution, and the consistent appointment by the executive power, of the majority of Supreme Court judges and the Attorney-General of the Nation, and the abolition of the Court of Constitutional Guarantees, thus achieving total submission of the judiciary to the executive power; (ii) the grant to military courts of jurisdiction to try civilians accused of terrorism; (iii) the prohibition of habeas corpus in cases concerning persons accused of terrorism; (iv) restriction of the right of defence which makes it virtually impossible for the lawyer not only to gain access to the detainee but even to consult the case files, particularly in trials before military courts; (v) the strengthening of the power of military commanders in national emergency areas, to whom all civilian authorities are subordinated; this affects 40 per cent of the national population.

7. The Constituent Congress has neither repealed the legislation summarized above, which was issued dictatorially, nor rectified the arbitrary acts of the executive power. The government majority in the Constituent Congress has refined even further the legal framework for impunity. Contrary to the practice deriving from the State Constitution (1979), it adopted the interpretation that congressional commissions of inquiry could not summon officers of the armed forces or the police to testify in situations where the Congressional Commission on Human Rights was investigating the detentions and disappearances at E.G.V.-La Cantuta University which were mentioned in paragraph 5 above. Moreover the new Democratic Constituent Congress has not pursued the investigations which were cut short by the coup d'état.

8. In view of this situation of complete impunity, FIDH urges the Sub-Commission to request the Commission to appoint a Special Rapporteur to investigate the serious and persistent violations which are occurring in Peru.

Notes

1/ Amnesty International reports: "The armed forces and the police use torture both for interrogation and as a punishment" (see Peru. "Derechos humanos en un clima de terror", Lima, EDAI, 1991, p. 41.) Americas Watch maintains: "[Torture] is the usual method of interrogation used by police forces in Peru both on persons accused of subversive activities and on ordinary prisoners" (cf. Tolerancia frente a los abusos. Violaciones a los derechos humanos en el Perú (October, 1989, p. 46).

2/ Some unpunished cases in the San Martín region alone: (a) the murder of César Alfonso Ramírez Pinchi (aged 22) at Picota on 16 April 1993 by members of the Peruvian army, who had arrested him three days before; (b) the murder of Josías Ramírez Angulo (aged 36) at Lamas on 8 September 1992 by members of the Peruvian army; (c) the murder of Erik Rojas Llanca (aged 17) at Tarapoto on 21 June 1992, etc. Moreover it is illustrative that perhaps the only case punished in the last few years concerned a massacre which took place at Santa Bárbara (Huancavelica, 1991). In this case the Military Court delayed passing sentence against members of the army for two years after the United States Congress had demanded that those responsible should be tried.

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